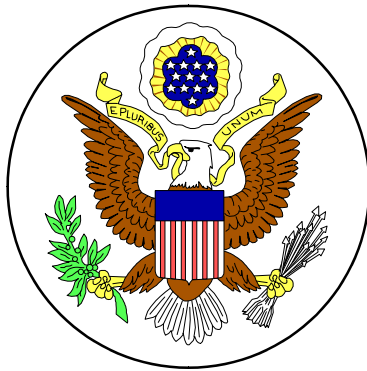


JUDICIAL CONFERENCE OF THE UNITED STATES

STATEMENT OF

**JUDGE JANE R. ROTH
U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT
CHAIR, JUDICIAL CONFERENCE COMMITTEE
ON SECURITY AND FACILITIES**



BEFORE

**THE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT**

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

ON

THE FY 2005 COURTHOUSE CONSTRUCTION PLAN

JULY 13, 2004

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before you today in my capacity as the chairman of the Judicial Conference's Committee on Security and Facilities. Chairman LaTourette and Congresswoman Norton, I look forward to working with you, the other members of the Subcommittee, and your staffs on this year's authorizations. I also want to express the judiciary's appreciation for the authorizations which the Transportation and Infrastructure Committee provided for courthouse projects last year.

FY 2005 Courthouse Program

Before explaining the judiciary's FY 2005 courthouse construction request, I would like to update the Subcommittee on two actions recently taken by the judiciary to bring our requests more in line with today's realities. Many Subcommittee members will recall that there was a three-year hiatus in the President's budget request for courthouse funding during fiscal years 1998, 1999, and 2000 and that the President's FY 2004 budget request did not include any funding for courthouse construction projects. This Committee and the Senate Committee on Environment and Public Works provided great assistance to the judiciary by continuing to authorize courthouse projects. We have been, and always will be, grateful for that support. Nonetheless, over the years a significant backlog of projects was created that caused delays in the courthouse construction program.

This backlog, in effect, has meant that unfunded courthouse projects carry over to subsequent years until they are funded. It has also meant that projects can increase in cost due to delay. The Judicial Conference recognizes that the budgetary constraints within which the

Congress must operate have been a major factor. Therefore, in an attempt to manage this backlog, in September 2003 the Judicial Conference voted to freeze the annual Five-Year Courthouse Project Plan until not more than \$500 million of courthouse projects remain on the first year of the plan.

Following the freeze, we were still left with a list for FY 2005 that numbered 19 projects at a cost of approximately \$1.6 billion. Again, recognizing the budgetary constraints facing both the Congress and the judiciary in FY 2005 and beyond, earlier this year the Judicial Conference decided to revisit its FY 2005 request to determine whether it would be prudent to seek funding for all of these projects. Determining that it was not, in March 2004 the Judicial Conference voted to seek full funding in FY 2005 for only the four projects it had designated as judicial space emergencies in September 2003. The four judicial space emergency projects are: Los Angeles, California; El Paso, Texas; San Diego, California; and Las Cruces, New Mexico.

The Judicial Conference determined that a judicial space emergency exists in each of these four locations because the ability of each court to execute its responsibilities has been significantly impaired by the unavailability of space and the inability to alter their existing space. In addition, the Judicial Conference recognized the effect of aggressive border enforcement initiatives on each of the court's facilities and the serious security and operational problems in these four locations. The Judicial Conference declares a space emergency only when very unusual circumstances exist. In fact, prior to September 2003, the Judicial Conference had only declared an emergency at one location (Brooklyn, New York) over the past 16 years.

The Conference greatly appreciates the fact that this year the President's budget request includes \$314.385 million for Los Angeles, California; \$63.462 million for El Paso, Texas; and

\$3.068 million for San Diego, California for a total request of \$380.915 million. While the judiciary is pleased that the President's request included some funding for these projects, it is respectfully requesting that the Subcommittee provide the authorizations requested by the judiciary for each of the four judicial space emergencies.

The judiciary understands that the Subcommittee has received the necessary prospectuses from the General Services Administration (GSA) to use in authorizing three of these four projects. I am hopeful that the Subcommittee will request that GSA provide a fact sheet for the Las Cruces, New Mexico, project in addition to the information received on the Los Angeles, California; El Paso, Texas; and San Diego, California projects, so that the Las Cruces project may also be considered for authorization.

Why New Courthouses Are Needed for the Four Judicial Space Emergencies

There are four criteria that the judiciary uses to determine when a new courthouse is needed: the year the old courthouse is out of space, the number of judges impacted, security problems, and operational problems. For a courthouse project to be considered, the district's long-range facility plan must indicate that there is no more room for judges at the existing facility, but more judges are anticipated. Although it can lead to inefficient court operations, court-related units (probation, pretrial services, and the bankruptcy court), as well as Executive Branch agencies, have usually already been moved from the existing building to gain space. The four courthouse projects for which the judiciary is requesting authorizations in FY 2005 are described below.

The Los Angeles Project

Funding for the Los Angeles, California courthouse project is, once again this year, the number one priority for the judiciary. Last year, the Omnibus Consolidated Appropriations Act for FY 2004 (P. L. 108-199) included \$50 million, a portion of the total funding requested for the Los Angeles project. The President's FY 2005 budget request includes an additional \$314.385 million to complete construction of the new courthouse in Los Angeles. In order for the project to be constructed as currently designed, however, the Subcommittee would need to authorize \$395.5 million in FY 2005.

I understand, from the last time I testified before this Subcommittee, the concerns that you have raised about the Los Angeles project, particularly whether a single building should be authorized for the court. The judiciary also respects and recognizes the Committee's prerogative to authorize what it deems appropriate. We just want you to know that when planning for the Los Angeles project began in the late 1990's, the goal was to consolidate and expand the court's existing split operation into a single building. This has been the judiciary's priority since that time for several reasons. First, if district court operations remain split between two buildings several blocks away from each other, delays in proceedings and confusion for jurors and the public will continue. Jurors, critical evidence such as money and drugs, and sensitive files have to be escorted through five busy city blocks between the courthouses. Criminal defendants can sometimes appear before both district judges and magistrate judges in the same day. For example, magistrate judges conduct post-arrest arraignments and make initial bail determinations, which are then presented to a district judge for review a short time later. Successive proceedings such as these require the speedy transfer of defendants, attorneys, paperwork and sometimes evidence between the courtrooms of district judges and magistrate

judges.

In addition, the U.S. Marshals Service will also have to split its limited resources between two buildings and will be spending more time in the movement of prisoners. This situation could certainly hamper its ability to respond with adequate manpower to an emergency. Additional players, including pretrial services staff, interpreters, family members, and the press, would also move between buildings. Furthermore, the clerk of court would be required to conduct duplicate operations in each building, requiring additional staff.

The court believes that the larger facility that consolidates the district court into one building is the optimum solution for now and the least costly in the long-run. Whatever the Subcommittee decides, however, it is important that the Los Angeles courthouse project be authorized and funded this year. If this project is delayed further, the judiciary's entire courthouse program will continue to be adversely affected. As I said earlier in this statement, we recognize that it is your prerogative to authorize this project at a level the Committee deems appropriate. We do not want this project to be delayed.

The El Paso Project

The President's FY 2005 budget request includes \$63.462 million in construction funding for the El Paso, Texas courthouse project. Currently, there is no room remaining in the courthouse to build out any district judge courtrooms; two new district judges that were confirmed in 2003 still do not have permanent chambers and courtrooms. A magistrate judge, whose courtroom is now being used by one of these new district judges, has been moved to a makeshift hearing room.

El Paso is adjacent to Juarez, Mexico, one of the largest international border communities

in the United States. The existing courthouse is located about six blocks from this border, creating unique and critical security challenges for the court. Heating and air conditioning systems are antiquated and offices on the fifth floor of the current building do not have windows, creating unbearable conditions in summer months when temperatures spike. The inadequate electrical system regularly renders the two elevators in the front of the building inoperable. In addition, the only public elevator in the rear of the building is also used to transport prisoners. Because this elevator is small and can only accommodate six prisoners per trip, prisoners waiting for the elevator are held in the public corridor. In addition, the courthouse lacks a sallyport. When prisoners arrive at the courthouse, they are unloaded curbside near the open parking area. Construction funding for El Paso this year is essential.

The San Diego Project

The President's budget request includes \$3.068 million in additional design funding for the San Diego courthouse project. At the time that the judiciary was putting together its revised FY 2005 courthouse project plan priorities, we were hoping that funding could also be made available in FY 2005 for the construction of the San Diego courthouse. The project is ready for construction and is in desperate need of additional space. The existing courthouse in San Diego was not designed to permit expansion beyond the original number of courtrooms.

The current facility has several serious security problems. The courthouse lacks a secure sallyport for prisoner transfer and a loading dock is instead used for this purpose. In addition, both Immigration and Customs Enforcement and the U.S. Marshals Service must transport large numbers of prisoners past public areas like parking lots and elevators. Courtrooms also lack sufficient up-to-standard in-custody holding cells, with cells being constructed on the loading

dock to compensate.

Existing space limitations also result in several operational concerns – the district clerk’s office, court interpreters, and courtroom deputy clerks, for example, are located in another federal building, and half of the pro-se law clerk staff is located off-site in a leased building. The jury assembly room is also inadequate and is located in another federal building. Finally, the court continues to deal with problems with the existing HVAC system. The space situation in San Diego has become critical.

The Las Cruces Project

The President’s FY 2005 budget request did not include any funds for the courthouse project in Las Cruces, New Mexico. Having reached full capacity in 1993, the existing facility in Las Cruces has several serious deficiencies. Alterations made in the past to alleviate space issues have caused problems of their own – for example, two courtrooms were built from space originally designed for office use. As a result, the courtrooms contain columns that obstruct the view of the judge and jury.

A permanent resident district judge was recently appointed to Las Cruces. The court also depends on eight rotating district judges from the District of New Mexico as well as visiting judges from other districts to handle the large Las Cruces caseload. On average, Las Cruces has two or three visiting judges sitting simultaneously in addition to the three resident magistrate judges. Furthermore, two bankruptcy judges usually hold proceedings in Las Cruces every four to six weeks and are forced to conduct proceedings in a nearby hotel because of the lack of facilities.

The Las Cruces building also has several serious security and operational concerns. The

U.S. Marshals Service currently does not have adequately sized holding cells to accommodate the average number of prisoners each day, and no holding cells exist next to the courtrooms.

The corridors used to transport defendants into courtrooms are not separate and secure.

Operationally, the building does not contain a grand jury suite due to the conversion of the grand jury space into a magistrate judge's chambers. The building also lacks sufficient public waiting areas, attorney/witness conference rooms, and other areas required to conduct court operations properly, in addition to having an antiquated heating and air conditioning system in need of replacement. For these reasons, the Las Cruces project should also be authorized this year.

Conclusion

In conclusion, the judiciary asks the Committee to authorize the four courthouse emergency projects. We also support authorization of the courthouse repair and alteration projects included in the President's budget request for FY 2005. Thank you for the opportunity to testify today and for the Committee's support of the courthouse program over the years. I am happy to answer any questions you may have regarding the judiciary's facilities requirements for FY 2005.

FY 2005 Courthouse Construction Program
(in millions of dollars)

Project	Project Stage	Judiciary Request	President's Budget	House Authorization
Judicial Space Emergency Projects				
Los Angeles, CA	Addt'l Design, Construction	\$395.500	\$314.385	
El Paso, TX	Addt'l Site & Design, Construct	63.500	63.462	55.885
San Diego, CA	Addt'l Site & Design, Construct	215.500	3.068	
Las Cruces, NM	Site, Addt'l Design, Construct	60.600		52.382